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**AGREEMENT
BETWEEN CITY OF LOS ANGELES
AND
FRIENDS OF RUNYON CANYON FOUNDATION
FOR ACCEPTANCE OF OUTDOOR BASKETBALL COURT IMPROVEMENTS
AT RUNYON CANYON PARK**

This Gift Agreement ("AGREEMENT") is entered into this ____ day of _____, 201____, ("EFFECTIVE DATE") by and between the City of Los Angeles, a municipal corporation acting by and through its Board of Recreation and Park Commissioners ("CITY") and Friends of Runyon Canyon Foundation, a California nonprofit public benefit corporation ("FORC"), for the acceptance of outdoor basketball court and ancillary park improvements at Runyon Canyon Park as a gift to the City of Los Angeles. CITY and FORC may be referred to herein individually as "PARTY" and/or collectively as "PARTIES."

WHEREAS, CITY, through its Department of Recreation and Parks ("RAP"), owns and operates real property commonly referred to as Runyon Canyon Park ("PARK"), located at 2000 N. Fuller Avenue, Los Angeles, California 90046; and,

WHEREAS, CITY and FORC entered into a Memorandum of Understanding ("MOU"), approved by the Board of Recreation and Park Commissioners ("BOARD") on November 19, 2014 (Report No. 14-278), and executed April 15, 2015; and,

WHEREAS, CITY and FORC recognized the need to replace the existing retaining wall ("WALL") and refurbish the adjacent outdoor concrete court ("COURT") at the PARK, located within the area illustrated by the aerial site map ("SITE MAP") attached hereto and incorporated herein by reference as **Exhibit-A**, to accommodate the installation of outdoor basketball court improvements and ancillary enhancements at the COURT (collectively, "COURT IMPROVEMENTS"), for the benefit of the PARK and its visitors; and,

WHEREAS, Pink Dolphin Clothing, LLC, a California limited liability corporation ("DONOR") made a monetary, charitable contribution ("DONATION") to FORC in the amount of Two Hundred Sixty One Thousand, Nine Hundred Seven Dollars and Forty-Four Cents (\$261,907.44) to fund the COURT IMPROVEMENTS; and,

WHEREAS, DONOR identified and secured a monetary contribution from AQUAhydrate, Inc., a Los Angeles based health and fitness company incorporated in California ("Aquahydrate"), consisting of funding in the amount of Nine Thousand, Eight Hundred Dollars (\$9,800.00), to assist DONOR with project costs and pay for a multi-use drinking fountain to enhance the COURT IMPROVEMENTS, and provide a much needed water source to the COURT area for park patrons and their pets, as further described herein; and,

WHEREAS, the COURT IMPROVEMENTS collectively include, but are not limited to, the demolition and replacement of the existing WALL and installation of various basketball court improvements as described in further detail by the project proposal and project specifications prepared on behalf of the DONOR by B&H Holdings, LLC (dba, Digital Interiors), attached hereto and incorporated herein by reference as **Exhibit-B**; and,

WHEREAS, the BOARD conditionally approved the COURT IMPROVEMENTS at their meeting of November 4, 2015 (Report No. 15-223); and,

WHEREAS, DONOR agreed to fund such COURT IMPROVEMENTS valued up to approximately \$261,907.44, through the DONOR's DONATION provided to FORC; and,

WHEREAS, FORC agreed to accept such DONATION from DONOR and enter into contract(s) directly with Digital Interiors (dba, Digital Interiors - Contractor License No. 968742,), including selected subcontractors (collectively, "CONTRACTORS"), for the installation of the COURT IMPROVEMENTS at no cost to CITY, pursuant PLANS approved by PCM, and made invoice payments directly to such CONTRACTORS; and,

WHEREAS, DONOR agreed to donate the completed COURT IMPROVEMENTS to CITY through FORC, as a gift for the benefit and enjoyment of the general public ("GIFT"), and CITY agreed to accept this GIFT upon the project's completion, subject to RAP's post-development inspection performed by PCM; and,

WHEREAS, CITY and DONOR agreed to discuss, prepare, and execute a separate agreement for a term of ten (10) years, stipulating the terms and conditions through which DONOR will provide annual funding to RAP in a sufficient and mutually acceptable amount for the ongoing maintenance and repair of the completed COURT IMPROVEMENTS ("NEW COURT"), and in addition, for DONOR to contract with CONTRACTOR or other qualified, licensed contractor(s) for the resurfacing of the NEW COURT every three (3) years as necessary to ensure the longevity and aesthetics of the NEW COURT; and,

WHEREAS, CITY has agreed to thank and acknowledge DONOR and Aquahydrate, for their financial contributions to the GIFT, and FORC for their participation in the project as the fiscal recipient of the DONATION, through the placement of recognition signage in the forms illustrated by the signage design(s) attached hereto and incorporated herein by reference as **Exhibit C**, in accordance with the RAP Sponsorship Recognition Policy, and to be placed at locations at the COURT IMPROVEMENTS, as generally shown on the Concept Design Renderings attached hereto and incorporated herein by reference as **Exhibit-D**.

NOW THEREFORE, in consideration of the foregoing and the terms and conditions set forth herein, and the performance thereof, PARTIES hereby agree as follows:

1. PARTIES

FORC: Friends of Runyon Canyon Foundation
7119 W. Sunset Boulevard, #336
Los Angeles, CA 90046

CITY: City of Los Angeles
Department of Recreation and Parks
Board of Recreation and Park Commissioners
Fig Plaza Building
221 S. Figueroa Street, 3rd Floor
Los Angeles, CA 90012

2. FUNDING

DONOR provided funding towards the completion of the COURT IMPROVEMENTS through a DONATION to FORC in the amount of \$261,907.44. DONOR further committed to providing additional funding as necessary to fund any unanticipated contingencies and/or unexpected budget shortfalls due to required project change orders. Prior to the commencement of any construction activities, FORC confirmed to RAP in writing that all necessary funding to ensure the completion of the COURT IMPROVEMENTS was secured by FORC through the DONATION from DONOR. CITY was not, and shall not be responsible or liable for any project funding shortfalls or other financial liabilities associated with the completion of the COURT IMPROVEMENTS.

3. TERM AND TERMINATION

- A. The term of this AGREEMENT ("TERM") shall commence upon the EFFECTIVE DATE stipulated on page one of this AGREEMENT. Except for the continuing obligations of CITY and FORC set forth in this AGREEMENT, and unless otherwise terminated pursuant to the terms and conditions contained herein, this AGREEMENT shall expire upon completion of the COURT IMPROVEMENTS and approval of the Post-Development Inspection by PCM. Any amendment, extension, or modification to this AGREEMENT shall be executed pursuant to prior approvals by PARTIES and the Office of the City Attorney (City Attorney).
- B. FORC may terminate this AGREEMENT, in their sole discretion, immediately upon written notice to CITY, and shall not be liable to CITY for any reason for terminating this AGREEMENT if:

- (i) CITY uses, or authorizes use of the COURT or COURT IMPROVEMENTS in any way not authorized under this AGREEMENT;
 - (ii) Construction of the COURT IMPROVEMENTS has not begun within three (3) months from the EFFECTIVE DATE of this AGREEMENT due to delays caused directly by CITY or factors beyond CITY's control;
 - (iii) The land upon which the COURT IMPROVEMENTS are to be located is no longer owned by CITY;
 - (iv) The PARK ceases to be operated by CITY or initiates action to permanently restrict public access to the NEW COURT;
 - (v) In FORC's sole opinion, the COURT IMPROVEMENTS or the activities held thereon, are determined to be harmful, degrading or diluting to the reputation of FORC and/or DONOR, their names, or that of their affiliates; or,
 - (vi) CITY materially breaches any term or condition of this AGREEMENT.
- C. This AGREEMENT shall be terminated if either PARTY ceases to conduct its business or shall make any involuntary assignment of either its assets or its business for the benefit of creditors; or if a trustee or receiver is appointed to administer or conduct the PARTY's business affairs; or, if any insolvency proceedings are conducted against a PARTY and are not terminated or dismissed within forty-five (45) days, then the other PARTY may terminate this AGREEMENT with immediate effect upon written notice to such PARTY.

4. DEVELOPMENT OF COURT IMPROVEMENTS

Subject to the termination and other provisions set forth in this AGREEMENT, FORC agreed to contract directly with and pay all CONTRACTORS, as required, for the design, construction, and completion of the COURT IMPROVEMENTS, at no cost to CITY.

Such COURT IMPROVEMENTS include, but are not limited to, the demolition and replacement of the existing WALL in accordance with geo-technical studies performed by Feffer Geo Consultants, Inc. (May 28, 2015 – File No. 1577-54), on file with the RAP Planning, Construction, and Maintenance Branch ("PCM"); demolition and removal of existing, fallen chain-link fencing; installation of new

ten (10) foot high coated chain-link fencing around the perimeter of the COURT and WALL; leveling of the existing concrete COURT and resurfacing with Acrylotex textured surface, and installation of basketball regulation court striping with slip-resistant paint; installation of two (2) rigid eight (8) inch (7 gauge) square poles with five (5) foot regulation overhang fixtures and padding; installation of regulation tempered glass backboards and metal goals; and installation of a Murdock brand bi-level pedestal mounted drinking fountain with bottle filler and pet fountain (Model GYQ54), including associated plumbing and connections; as further described by the project proposal and project specifications prepared on behalf of the DONOR by B&H Holdings, LLC (dba, Digital Interiors), attached hereto and incorporated herein by reference as **Exhibit-B**; and installed pursuant to plans and specifications ("PLANS") approved by PCM and in accordance with applicable permits and certifications approved by the Department of Building and Safety ("DBS")

A. Design and Location

- (i) The COURT IMPROVEMENTS were installed within the legal boundaries of the PARK at the specified location identified on the SITE MAP attached hereto as **Exhibit A**, pursuant to the terms and conditions of a Right-Of-Entry ("ROE") permit issued by PCM authorizing CONTRACTORS to access the PARK and COURT, including certain areas of the PARK for ingress-egress, staging, and storage, for purposes of completing the COURT IMPROVEMENTS.
- (ii) The COURT IMPROVEMENTS were constructed and/or installed pursuant to PLANS approved by RAP, in accordance with the Concept Design Renderings attached hereto as **Exhibit-D**.
- (iii) FORC has confirmed that all costs for the design or re-design of the COURT IMPROVEMENTS have been or will be paid with funds received from DONOR.
- (iv) PARTIES shall jointly approved the design of the COURT IMPROVEMENTS.
- (v) FORC confirms that any modifications, additions, and/or changes to the approved PLANS were reviewed and approved by RAP.

B. Construction

- (i) FORC confirms that RAP approved the PLANS for the COURT IMPROVEMENTS prior to installation.

- (ii) FORC shall pay all costs for the construction of COURT IMPROVEMENTS, pursuant to PLANS approved by RAP.
- (iii) RAP confirms that PCM issued the ROE authorizing CONTRACTOR's access to the PARK in coordination with the RAP Forestry Division for installation of the COURT IMPROVEMENTS, including ingress-egress and use of certain PARK areas for staging and storage.
- (iv) FORC confirms that CONTRACTOR, in coordination with PCM, was the lead agency with respect to construction activities and oversaw the installation of the COURT IMPROVEMENTS, including the completion of environmental clearances and any permits or certifications required by law. All costs and filing of documents required for obtaining said clearances, approvals and authorizations were borne by FORC and/or CONTRACTOR.
- (v) FORC confirms that PARTIES approved any and all change orders related to the construction of the COURT IMPROVEMENTS.
- (vi) FORC agrees to provide CITY with approved "As-Built" drawings of plans within thirty (30) days from the Notice of Completion.

5. HAZARDOUS SUBSTANCES/MATERIALS

CITY and FORC agree as follows with respect to the existence or use of Hazardous Materials (as defined in Paragraph 5C below) on the COURT or within the PARK:

A. Prohibition

FORC confirms that CONTRACTOR did not, or shall not, cause or permit any Hazardous Material to be brought upon, kept or used in or about the COURT or PARK, by CONTRACTOR, its agents, employees, contractors or invitees, in violation of law or in quantities which would require reporting to a governmental entity, without the prior written consent of the General Manager, which consent shall not be unreasonably withheld, if applicable. If FORC or CONTRACTOR breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material on the COURT, PARK or NEW COURT, caused or permitted by FORC or CONTRACTOR, results in contamination of the COURT, PARK, or NEW COURT, or if contamination of the COURT, PARK, or NEW COURT by Hazardous Material otherwise occurs for which FORC or CONTRACTOR is legally liable to CITY for damage resulting there from, then FORC shall indemnify, hold CITY harmless, and defend CITY (with counsel

reasonably acceptable to CITY) from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the COURT, PARK, or NEW COURT damages for the loss or restriction on use of rentable or usable space, or of any amenity of the COURT, PARK, or NEW COURT damages arising from any adverse impact on marketing of space on the COURT, PARK, or NEW COURT and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Term as a result of such contamination. This indemnification of CITY by FORC includes, without limitation, costs incurred in connection with any investigation of the COURT, PARK, or NEW COURT conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the COURT, PARK or NEW COURT. Without limiting the foregoing, if the presence of any Hazardous Material on the COURT, PARK, or NEW COURT caused or permitted by FORC or CONTRACTOR results in any contamination of the COURT, PARK, or NEW COURT, FORC shall promptly take all actions at its sole expense as are necessary to return the COURT, PARK, or NEW COURT to the condition existing prior to the introduction of any such Hazardous Material to the COURT, PARK, or NEW COURT; provided that CITY's approval of such actions shall first be obtained, which approval shall not unreasonably be withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the COURT, PARK or NEW COURT. However, the foregoing provisions shall not prohibit CONTRACTOR from transportation to and from, and the use, storage, maintenance, and handling within the COURT, PARK, or NEW COURT of substances customarily used in connection with normal use by a contractor performing work identical or similar to that described herein, provided: a) such substances shall be used and maintained only in such quantities as are reasonably necessary for the authorized use of the COURT, PARK, or NEW COURT set forth in this AGREEMENT or the ROE, strictly in accordance with applicable laws and the manufacturers' instructions therefore; b) such substances shall not be disposed of, released, or discharged at the COURT, PARK, or NEW COURT and shall be transported to and from the COURT, PARK, or NEW COURT in compliance with all applicable laws, and as CITY shall reasonably require; c) if any applicable law or the trash removal contractor or RAP requires that any such substances be disposed of separately from ordinary trash, CONTRACTOR shall make arrangements at FORC or CONTRACTOR's expense for such disposal directly with a qualified and licensed disposal company at a lawful disposal site, and shall ensure that disposal occurs frequently enough to prevent unnecessary storage of such substances on or around the COURT, PARK, or NEW COURT; and d) any remaining such substances shall be completely, properly, and lawfully

removed from the COURT, PARK, or NEW COURT upon expiration or earlier termination of this AGREEMENT.

B. Compliance Costs

CITY and FORC acknowledge that CITY may become legally liable for the costs of complying with laws relating to Hazardous Material which are not the responsibility of FORC, including the following: (1) Hazardous Material present in the soil or ground water; (2) a change in Laws which relate to Hazardous Material which make such Hazardous Material which is present on the COURT, PARK, or NEW COURT as of the EFFECTIVE DATE, whether known or unknown to CITY, a violation of such new laws; (3) Hazardous Material that migrates, flows, percolates, diffuses or in any way moves on to or under the land; (4) Hazardous Material present on or under the land as a result of any discharge, dumping or spilling (whether accidental or otherwise) on the land by other owners of the COURT, PARK, or NEW COURT, or their agents, employees, contractors or invitees, or by others. Accordingly, CITY and FORC agree that the cost of complying with laws relating to Hazardous Material on the COURT, PARK, or NEW COURT for which CITY may be legally liable shall be borne by CITY unless the cost of such compliance, as between CITY and FORC, is made the responsibility of FORC pursuant to this AGREEMENT.

C. Hazardous Material – Definition

As used herein, the defined term "Hazardous Material" means any chemical, substance, material, or waste or component thereof the presence of which requires investigation or remediation under any federal, state, or local statute, regulation, ordinance, order, action, policy, or common law, or which is now or hereafter listed, defined, or regulated as a flammable explosive, radioactive material, hazardous or toxic chemical, substance, material or waste or component thereof (whether injurious by themselves or in conjunction with other materials) by any federal, state, or local governing or regulatory body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by such body, or for which any such body has adopted any requirements for the preparation or distribution of a material safety data sheet. "Hazardous Material" includes, without limitation, any material or substance which is: a) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); b) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act, California

Health and Safety Code Section 25300, et seq.); c) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory, California Health and Safety Code Section 25500, et seq.); d) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances, California Health and Safety Code Section 25280, et seq.); e) petroleum; f) asbestos; g) defined as a "hazardous constituent," "hazardous material," "hazardous waste," or "toxic waste" under Article 2 of Chapter 10 (Section 66260.10) or defined as a "hazardous waste" under Article 1 of Chapter 11 (Section 66261.3) of Title 22 of the California Code of Regulations, Division 4.5 (Environmental Health Standards for the Management of Hazardous Waste, 22 C.C.R. Section 66001, et seq.); h) designated as a "hazardous substance" pursuant to Section 311 (33 U.S.C. § 1321) of the Clean Water Act of 1977, as amended (Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq.); i) defined as a "hazardous waste" pursuant to Section 1004 (42 U.S.C. § 6903) of the Federal Resource Conservation and Recovery Act of 1976, as amended (RCRA, 42 U.S.C. § 6901, et seq.); j) defined as a "hazardous substance" pursuant to Section 101 (42 U.S.C. § 9601) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA, 42 U.S.C. § 9601, et seq.); or k) defined as "hazardous material" under Section 103 (49 U.S.C. § 1802) of the Hazardous Materials Transportation Act (49 U.S.C. § 1801, et seq.), as such laws may be amended from time to time, and the regulations adopted and publications promulgated pursuant to such laws.

D. Disposal of Hazardous Material

If CONTRACTOR disposes of any soil, material or groundwater contaminated with hazardous material, FORC and/or CONTRACTOR shall provide CITY copies of all records including a copy of each uniform hazardous waste manifest indicating the quantity and type of material being disposed of, the method of transportation of the material to the disposal site and the location of the disposal site. Except where presence of Hazardous Material predated this Lease, CITY shall not appear on any manifest document as a generator of such material disposed of by CONTRACTOR.

E. Hazardous Material Tests

Any tests required of FORC or CONTRACTOR by this Article shall be performed by a State of California Department of Health Services certified testing laboratory satisfactory to CITY. By signing this AGREEMENT,

FORC hereby irrevocably directs any such laboratory to provide CITY, upon written request from CITY, copies of all of its reports, test results, and data gathered. As used in this Article, the term "FORC" includes agents, employees, contractors, subcontractors, and/or invitees of FORC.

F. Notice of Hazardous Substances

California Health and Safety Code section 25359.7(a) requires any owner of nonresidential real property who knows, or has reasonable cause to believe, that any release of hazardous substance has come to be located on or beneath that real property to, prior to the lease or rental of that real property or when the presence of such release is actually known, give written notice of that condition to the lessee or renter. California Health and Safety Code section 25359.7(b) requires any tenant of real property who knows, or has reasonable cause to believe, that any release of a hazardous substance has come to be located on or beneath that real property to give written notice of such condition to the owners. FORC, CONTRACTOR, and CITY shall comply with the requirements of section 25359.7 and any successor statute thereto and with all other statutes, laws, ordinances, rules, regulations and orders of governmental authorities with respect to hazardous substances.

6. POST DEVELOPMENT

- A. RAP conducted, or shall conduct, a Post-Development Inspection to ensure that the COURT IMPROVEMENTS have been developed pursuant to approved PLANS and in compliance with the terms and conditions of this AGREEMENT and the ROE.
- B. Following RAP's acceptance of the completed COURT IMPROVEMENTS and subsequent to opening of the NEW COURT to the public, FORC shall have no involvement, whether financial or otherwise, with the use, operation, maintenance, landscaping, repair, insurance, programming or modifications of the NEW COURT unless such modification is required due to faulty work by CONTRACTOR, faulty materials or equipment used, or subsequently discovered work not completed in accordance with approved PLANS.
- C. It is understood by PARTIES that the NEW COURT shall generally be open to the members of the public free of charge, subject to local rules, regulations, ordinances, and laws which may include provisions related to hours of operation, age limits, acknowledgement of risk by users of the NEW COURT and PARK, and the prohibition of alcohol and illegal drugs.

- D. It is also understood by PARTIES that there shall generally be no limit to the use of the NEW COURT to any select group of persons; however CITY may issue permit(s) for the use of the NEW COURT by members of a group or organization for limited periods of time.

7. PUBLICITY

- A. PARTIES shall acknowledge one another and DONOR as co-contributors in written material(s), news releases, and related marketing or publicity materials, including but not limited to, an initial press conference and/or dedication ceremony.
- B. PARTIES agree to assist and cooperate in a mutually acceptable grand-opening and/or dedication event at the NEW COURT.
- C. PARTIES shall also have the right to publicize, show photographs of, use the name of, and otherwise promote their respective contributions to the COURT IMPROVEMENTS.
- D. CITY and FORC acknowledge that each of the PARTIES and DONOR name(s) and other intellectual property of CITY, FORC and DONOR have substantial goodwill. CITY further acknowledges and agrees that all use of the FORC and DONOR name pursuant to this AGREEMENT, COURT IMPROVEMENTS, and NEW COURT shall inure to the sole and exclusive benefit of FORC and DONOR, and CITY agrees to use the FORC and DONOR name solely in accordance with the terms and conditions set forth in this AGREEMENT. Additionally, FORC further acknowledges and agrees on behalf of FORC and DONOR, that all use of the CITY name pursuant to this AGREEMENT, shall inure to the sole and exclusive benefit of CITY and RAP, and FORC agrees, on behalf of FORC and DONOR, to use the CITY and RAP name(s) solely in accordance with the terms and conditions set forth in this AGREEMENT.
- E. PARTIES agree to cooperate and coordinate with respect to the nature, text, and timing of any press release or public announcement(s) concerning the existence of the GIFT, the NEW COURT, and/or this AGREEMENT; the use or promotion of the NEW COURT; or construction/installation of any additional improvements at the completed NEW COURT, except as may be legally required by applicable laws, regulations, or judicial order:
 - (i) PARTIES agree that any press release, public announcement, marketing materials, or brochures prepared by either of the PARTIES shall appropriately acknowledge the contributions of both PARTIES;

- (ii) To the extent stipulated in any grant agreement, partnership agreement, donation agreement, or other agreement, PARTIES shall duly notify any grantors, donors, partners or other party, and each other, prior to any public or media event publicizing the accomplishments funded by any grant agreement or other funding source, and shall provide the opportunity for attendance and participation by grantor, donor, partner, or other respective representatives;
- (iii) PARTIES shall coordinate the scheduling and organization of any public or media event to provide the opportunity for attendance and participation by officials and/or representatives of CITY, FORC and DONOR; including elected officials and public officials. Similarly, any document, written report, or brochure prepared by either CITY or FORC, in whole or in part, pursuant to the installation of the COURT IMPROVEMENTS, shall contain any acknowledgements required under any related grant agreement, partnership agreement, donation agreement or other agreement or funding source; and,
- (iv) FORC agrees that any public release or distribution of information related to the NEW COURT, this AGREEMENT, and/or any related project, programs or services, shall include the following statement at the beginning or introduction of such release:

"In collaboration with the City of Los Angeles
Department of Recreation and Parks"

8. USE OF MARKS

Notwithstanding any provision herein, neither PARTY shall use the other's trademarks, trade-names or logos (each, a "Mark"), or that of DONOR, without the prior written approval of the subject entity. Each Mark shall remain the sole and exclusive intellectual property of the respective entity.

9. NAME, LICENSE AND SIGNAGE

- A. If applicable and when appropriate, the NEW COURT shall be officially named by RAP, subject to the approval of the BOARD, in accordance with RAP Policy.
- B. DONOR and Aquahydrate shall be recognized for their contributions to the NEW COURT, through appropriate signage and corporate logo placement at the COURT IMPROVEMENTS, as depicted by the Concept Design

Renderings attached hereto as **Exhibit-D**, acknowledging the GIFT in accordance with the RAP Sponsorship Recognition Policy.

- C. Pursuant to the GIFT under this AGREEMENT, and in accordance with the terms and conditions of a separate agreement between CITY and DONOR for the sponsorship and maintenance of the NEW COURT ("SPONSOR AGREEMENT") funded by DONOR, the "Pink Dolphin" corporate logo, as depicted by Exhibit D, shall remain in place for a period of time consistent with the term of said SPONSOR AGREEMENT.
- D. CITY shall retain the right to use the name of the NEW COURT in conducting RAP operations and events. For purposes of clarification, CITY shall have no right to use the FORC, Aquahydrate, or DONOR name in any manner that suggests FORC, Aquahydrate, and/or DONOR are/is a sponsor or co-sponsor of any daily operations or events at the NEW COURT to which they are not affiliated or sponsoring. No other company, entity, or individual's name shall be used in connection with the NEW COURT without RAP's prior written approval.

10. REPRESENTATIONS AND WARRANTIES

- A. FORC represents and warrants that it has the right and power to enter into and perform this AGREEMENT, and to grant the rights granted herein.
- B. CITY represents and warrants that it has the right and power to enter into and perform this AGREEMENT, and that it will comply with all applicable rules, regulations, ordinances and laws related to the use and operation of the NEW COURT and PARK.

11. INDEMNIFICATION

Each PARTY agrees to defend, indemnify and hold the other harmless from all loss, expense or liability for injury or death to persons and for damage, actual or alleged, to tangible property arising out of or resulting from the acts or omissions of the indemnifying PARTY, or any other person subject to supervision or control by the indemnifying PARTY, in the performance of this AGREEMENT.

In the event of third-party loss caused by the negligence, wrongful act or omission of more than one PARTY, each PARTY hereto shall bear financial responsibility in proportion to its percentage of fault as may be mutually agreed between them or may be judicially determined.

12. INSURANCE

A. Insurance by FORC and CONTRACTOR(s) hired by FORC

Prior to the commencement of on-site project activities related to the installation of the COURT IMPROVEMENTS, FORC, and CONTRACTORS hired by FORC, provided proof of insurance to the City Administrative Officer Risk Management office through the Risk Management website (<http://track4la.lacity.org/>), as required by the ROE, in the coverage amounts specified on Form 146R attached to the ROE, and included the City of Los Angeles as an additionally insured for the same coverage amounts. FORC and their CONTRACTORS shall continue to maintain such insurance during the term of this AGREEMENT

13. BOOKS AND RECORDS

FORC and CITY shall maintain records, including records of financial transactions, pertaining to the performance of this AGREEMENT, in their original form, in accordance with requirements prescribed by CITY and FORC. These records shall be retained for a period of the lesser of three (3) years after termination of this AGREEMENT or ten (10) years from the date of the record.

Said records shall be subject to examination and audit by authorized CITY or FORC personnel or by their representative(s) at any time during the TERM of this AGREEMENT, or within the three years following the termination date of this AGREEMENT.

14. GENERAL

- A. Entire Agreement. This AGREEMENT sets forth the entire understanding of the PARTIES hereto, with respect to the subject matter hereof. There are no other representations, understandings, or agreements between the PARTIES relative to such subject matter. Any variation or amendment to this AGREEMENT shall be in writing and signed by all PARTIES.
- B. No Joint Venture. Nothing herein contained shall constitute a partnership or joint venture by the PARTIES of this AGREEMENT. This AGREEMENT is not intended for the benefit of any non-party.
- C. Governance. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of California, without regard to its principles of conflicts of law. PARTIES consent to the sole and exclusive jurisdiction and venue in the Federal or State courts in Los Angeles County, California, and agree that all disputes based on or arising out of

this AGREEMENT shall only be submitted to and determined by said courts, which shall have sole and exclusive jurisdiction.

- D. Notices. Any notices required to be given under this AGREEMENT shall be sent by courier and addressed to the PARTIES as follows:

CITY: City of Los Angeles
Department of Recreation and Parks
Central Service Yard
3900 Chevy Chase Drive, Mail stop 628-9
Los Angeles, California 90039

Attn: Partnership Division
(818) 243-6488

Copy To: City of Los Angeles
Department of Recreation and Parks
Planning, Construction and Maintenance Division
Fig Plaza Building
221 S. Figueroa Street, 4th Floor
Los Angeles, CA 90012

Attn: Superintendent
(213) 202-2681

FORC: Friends of Runyon Canyon Foundation, Inc.
7119 W. Sunset Boulevard, #336
Los Angeles, CA 90046

Attention: Don Andres, Vice President and Treasurer
(323) 333-7445

- E. Notices shall be deemed received when delivered by courier. PARTIES may change the person and address to which notice shall be given by giving notice of such change pursuant to the provisions of this AGREEMENT.
- F. The provisions of this AGREEMENT that, by their nature, are intended to survive, shall survive the expiration or earlier termination of this AGREEMENT.
- G. No right, obligation, duty, benefit or promise of this AGREEMENT, or any portion thereof, may be assigned by either party without the express written consent of the other party; provided that the FORC may assign to an affiliate with prior written consent by CITY.

- H. CITY's use of the NEW COURT shall be primary to any other use by any other party, including FORC.
- I. If any provision of this AGREEMENT is declared or determined to be unlawful, invalid or unconstitutional, that declaration shall not in any manner affect the legality of the remaining provisions, and each provision of this AGREEMENT shall be deemed to be separate and severable from every other provision.

15. RATIFICATION

At the request of RAP, and because of the need therefore, FORC began performance of the responsibilities herein required prior to the execution hereof. By its execution hereof, RAP hereby accepts such service subject to all the terms, covenants, and condition of this AGREEMENT, and ratifies its AGREEMENT with FORC for such services.

16. INCORPORATION OF DOCUMENTS

The following Exhibits are incorporated by reference:

- Exhibit A: Property Map – Runyon Canyon Court Area
- Exhibit B: Project Proposal and Specifications
- Exhibit C: Recognition Signage
- Exhibit D: Concept Court Design Rendering

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the day and year first above written.

CITY:

CITY OF LOS ANGELES, a municipal corporation, acting by and through its BOARD OF RECREATION AND PARKS COMMISSIONERS

FORC:

FRIENDS OF RUNYON CANYON FOUNDATION, a California nonprofit corporation

By: _____
President

By: _____

By: _____
Secretary

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By: _____
Deputy City Attorney

Date: _____

